THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 1398 of 2006

1. Smt. Kusum W/O Late Sri Roob Raj Singh,
2. Prabhat,
3. Himanshu, Petitioner No. 2 & 3 both minor sons of late Sri Roob Raj Singh,
4. Rajni,
5. Seema,
6. Ritu, Petitioner, Nos. 4 to 6 D/O Late Sri Roob Raj Singh,
   Petitioner Nos. 2 & 6 since being minor now represented through their mother and natural guardian Smt. Kusum (Petitioner No.1). All R/O Village Shaphur Sheetla Khera, Pargana Jwalapur, Tahsil & District Haridwar.

1 … **Petitioners.**

Versus

1. Smt. Krishna Devi W/O Late Sri Bhalla Ram, R/O Mohalla Shivpura, Kankhal, Pargana Jwalapur, Tahsil & District Haridwar (Plaintiff).
2. Ved Ram,
3. Yogendra
   Respondent nos. 2 to 3 S/O Late Sri Kewal Singh,
4. Pappu S/O Late Sri Mohar Singh,
   Respondent nos. 2 to 4 R/O village Shahpur Sheetal Khera, Pargana Jwalapur, Tahsil & District Haridwar (Defendants)
5. Civil Judge (S.D.) District Haridwar.
6. District Judge, District Haridwar.

… **Respondents.**

Sri Sharad Sharma, learned counsel for the petitioners.
Learned Standing Counsel for the respondents No. 5 & 6.
Sri Parikshit Saini, Adv. learned counsel for respondent no.1.

Date September 27, 2006

PC: (Hon'ble B.S. Verma, J.)

Heard learned counsel for the parties and perused the record.

The present writ petition has been filed for quashing the impugned orders dated 1-9-2006 and 19-10-2005 passed by the respondent nos. 6 and 5 respectively. By the order dated 19-10-2005 passed by Civil Judge (Senior Division) Haridwar has dismissed the objections (paper no.4C) filed by the objector Roob Raj Singh in

Misc. Civil Case No. 15 of 2003. The District Judge Haridwar dismissed the Misc. Civil Appeal No. 140 of 2005 vide order dated 1-9-2006 preferred by the petitioner against the order passed by the respondent no.5.

Relevant facts that Smt. Krishna Devi filed a suit for specific performance of contract against Kewal Singh, which was registered as Suit No. 46 of 1991 before the trial court, which was decreed vide judgment and order dated 26.2.2000. The decree holder then filed execution application before the court concerned which was registered as Execution Case No. 20 of 2002. During the pendency of execution case, objector-petitioner filed objection under Section 47 and Order 21, Rules 96, 97, 98, 99 and 101 of the C.P.C. on the ground that the disputed property was purchased by the objector in auction sale and the sale deed was executed in favour of the objector on 11.2.2003 and the petitioner has been in possession of he said property and his name was recorded in the revenue papers. The decree holder contested case. The executing court after hearing both the parties dismissed the objection filed by the petitioner/objector vide order dated 19-10-2005. Being aggrieved by the said order, the petitioner went up in appeal before the District Judge, but the learned appellate court did not find favour with the objector and the Misc. Appeal was dismissed vide order dated 1-9-2006.

At the out set it may be mentioned that Order 21, Rule 103 of the Code of Civil Procedure provides that *"where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."*

Admittedly, the order passed by the Civil Judge (Senior Division) Haridwar dated 19-10-2005 amounts to a decree. Therefore, a regular appeal ought to have been filed against the impugned order passed by the trial court.

In the course of arguments, both the parties have agreed that in case regular appeal is filed by the petitioners, they are ready to maintain status quo till the decision of appeal.

In view of the above, the order passed by the District Judge dated 1-9-2006 is liable to be set aside and the writ petition reserves to be allowed.

The writ petition is allowed. The order dated 1-9-2006 passed by the District Judge is set aside. If appeal is preferred before the District Judge, Haridwar, the same shall be decided within a period of six months form the date of presentation of appeal. In that event, both the parties shall maintain status-quo till the decision of appeal.

(B.S. Verma, J.)

RCP